

ELDER ABUSE TRAINING

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PROSECUTION CHALLENGES

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ELDER ABUSE PROSECUTION CHALLENGES

strategies to help rise to the occasion

October 19, 2018



Vulnerable Adult

Not just any adults.....

§46-451(9)

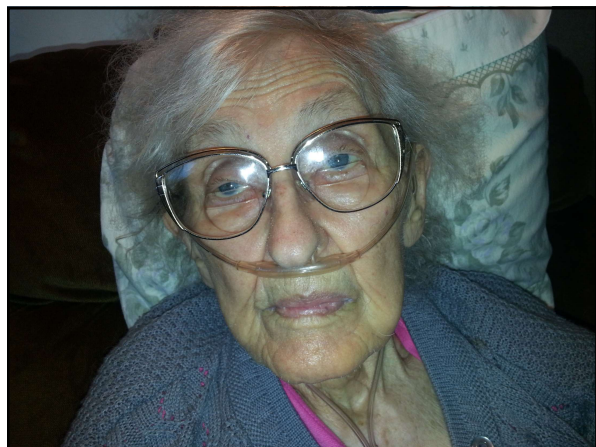
Person 18 years of age or older who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment.

Includes incapacitated person (§14-5101)

Most cases not reported

- Fear of the caregiver/retaliation
- Threatened by caregiver
- Mistrust of others
- Prevented from being alone with visitors
- No access to telephone
- Fear of the alternative

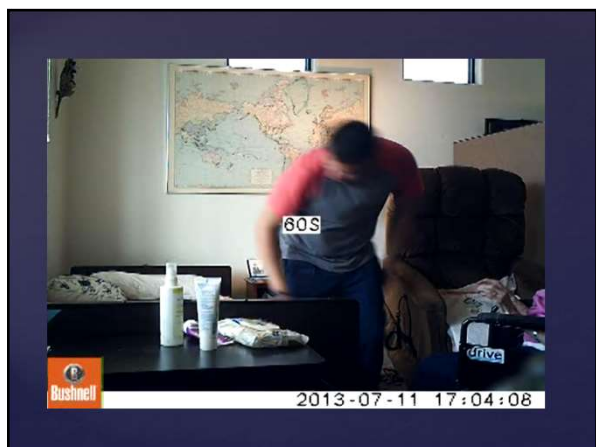
"This is bad, but if I report I might be put in a nursing home."





Doris injury photos





Challenges

- ☐ Lack of independent witnesses.
- ☐ Identification issues.
- ☐ Memory issues with victims and witnesses.
- ☐ Late reporting-evidence not preserved.
- ☐ Victim is often unavailable for trial.
 - Recanting
 - Physically unable to come to Court
 - Mentally unable to testify or recall events
 - Deceased
- ☐ Injuries
 - Visible
 - Invisible

Victim cannot testify.....
 Victim is deceased.....
 The perpetrator paid the money back.....
 There aren't any other witnesses.....

"It's a civil issue."

So it isn't a crime?!

Thorough, informed investigation
 Plus
 Active, relentless prosecution
 Equals
 Greater likelihood of conviction

JUSTICE FOR VICTIMS

CHARGING DECISIONS
 FINANCIAL CASES

Subsection (B) Financial Exploitation of a Vulnerable Adult

46-456: "position of trust and
confidence"

Subsection (H): Super Theft

THEFT 13-1802

Fraudulent schemes and artifices

- Any person who,
 - pursuant to a scheme or artifice to defraud,
 - knowingly obtains any benefit by means of
false or fraudulent pretenses,
 - representations, promises or material
omissions
- is guilty of a class 2 felony.

ARS 13-2310

Forgery 13-2310

- A person commits forgery if, with intent to defraud,
the person:

Falsely makes, completes or alters a written
instrument; or

Knowingly possesses a forged instrument; or

Offers or presents, whether accepted or not, a
forged instrument or one that contains false
information



Bank Name

1234 5678 9012 3456
1234 5678 9012 3456
CARDHOLDER

Investigative Challenges (We need bank records!)

Preservation of Evidence

The average financial institution will preserve video and photographs for approximately 60 to 90 days, but.....

Even if you contact them within that time frame, that does not guarantee they will provide you with the information.

Wells Fargo and **JP Morgan Chase** have separate divisions that only work video and photographs.

USAA Bank is a company that is broken into 3 different divisions, Banking, Investments and Insurance and knowing which one to serve will save you lots and lots of headaches.

On line banks like **Ally Bank** and others will not accept or honor any documents since they don't have branch offices with daily financial transactions occur.

Court Orders

Subpoenas/Grand Jury Subpoenas

- Can be used for financial records from financial institutions (average of 30 to 45 day turnaround time)
- cellular telephone records, utility companies, business records, etc.
- Will not work for medical records due to HIPPA!

Search Warrants

- Can be used for same as listed above and more.
- They can also be used to obtain medical records.

Other Orders used by AGO

RAC Demands

Racketeering Demand (Request to Produce Records)

- order which is signed by an Assistant Attorney General can be used to obtain financial records for any financial institutions.
- Financial institutions seem to process these faster than the subpoenas with turnaround times being 2 weeks to 30 days.

Other orders, cont.

Title 9 Letters

allows AGO Investigators to serve AHCCCS Providers to obtain employee files, employee disciplinary records, employee payroll/timesheets, client files, client records, medical logs/medications schedules, and etc.

454 Letters (ARS 46-454(E))

allows a peace officer in the State of Arizona who is investigating the alleged neglect, abuse, or exploitation of an incapacitated or vulnerable adult to obtain medical or financial records. There has to be an AHCCCS Component to the investigation for this to work.

THE ABUSE CASE

Child/Vulnerable Adult Abuse

- Likely to produce death or serious physical injury
- Other than those likely to produce death or serious physical injury
- Emotional Abuse

§13-3623

Evidence-Based Prosecution

- Using a variety of evidence to prove the guilt of an abuser
 - with limited, adverse or no participation by the Victim.
 - Using non-hearsay and hearsay exceptions.
- Originally used in domestic violence cases.
- Use all of your evidence like you are proving a circumstantial case together with applicable hearsay exceptions.

Defendant's Right of Confrontation

Precludes the use of hearsay statements made to a governmental agent where the speaker or the agent could reasonably expect the statements to be used in litigation

Crawford v. Washington

Hearsay

Out of court statement . . .

- Can be oral, written or non-verbal assertion.

Made by a person (Declarant) . . .

Offered to prove the truth of the matter asserted.

The rule does not apply when:

1. The witness is currently unavailable; and
2. At some point, the Defendant had the opportunity to cross-examine the witness

Non- Hearsay

Prior Statement by a Witness

- Declarant testifies at trial or a hearing, and
- Is subject to cross-examination concerning the statement, and

The statement is...

- Inconsistent with testimony, or
- Consistent with testimony after a claim of recent fabrication, improper influence or motive, or
- One of identification of a person made after perceiving that person.

Hearsay Exceptions

- Present sense impression.
- Excited utterance.
- Then existing mental, emotional or physical condition.
- Statements made for purpose of medical diagnosis or treatment.
- Recorded recollection.
- Reputation as to character.

More Hearsay Exceptions

(WITNESS UNAVAILABLE)

- Former Testimony (e.g. Preliminary Hearing).
- Statement under belief of impending death.
- Statement against interest.
- Statement of personal or family history.

All witnesses are presumed competent
This issue is raised based on stereotypes
Ask for a Pre-trial competency hearing

Competent if:

--S/he understands the nature of taking the oath; and

--S/he is capable of giving a correct account of what she has seen, heard or experienced

COMPETENCY

--Witness is unavailable;
 --Witness was sworn during previous testimony;
 --The accused was present and afforded the opportunity to cross-examine; and
 --The foundation for the admissibility of the prior testimony is established.

DEPOSITION

Using a microphone, increasing volume
 Assistive hearing devices
 Using a magnifying sheet to look at exhibits
 More frequent breaks/recesses
 Adjusting location of the witness stand

SPECIAL REQUESTS (MIL)

Overcome stereotypes
 Especially the characterization of a vulnerable adult as an inherently unreliable witness

Ask jurors about their own memories

Personal vulnerability

VOIR DIRE

Financial exploitation:
consent, loan, gift, "spending down"

Neglect:
"He refused to eat,"
"Its not my job"/No duty of care
Following her wishes
"I did everything in my power."

ANTICIPATE DEFENSES

Physical Abuse:
Self defense/ "She was being combative."
Injuries are from medication/age/thin skin
Accident
Dementia/ "You can't believe anything she says"

Sexual Assault:
"I didn't know that she had Alzheimer's"
Consent
Lack of evidence
I was "changing her diaper/ giving her a massage"

DEFENSES, cont.

Enough information,
Jesse..
Prove to us that it works!

CASE EXAMPLES



Vulnerable
Adult?



Julie Lane



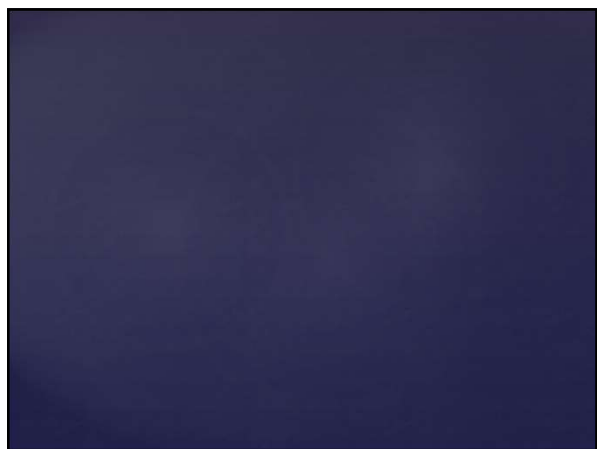
Ruthann Jacox, R.N.



Ruthann Jacox,
Abuse, Neglect and Exploitation
Victim



Lea Hughes and Gilbert Peralta



Thank You!

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